

Order

**Michigan Supreme Court
Lansing, Michigan**

December 16, 2008

Clifford W. Taylor,
Chief Justice

ADM File No. 2008-41

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Proposed Amendment of
Rule 3.101 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.101 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 3.101 Garnishment After Judgment

(A)-(G)[Unchanged.]

(H) Disclosure. The garnishee shall mail or deliver to the court, the plaintiff, and the defendant, a verified disclosure within 14 days after being served with the writ.

(1) Nonperiodic Garnishments.

(a)-(b) [Unchanged.]

(c) If the garnishee is indebted to the defendant, but claims that withholding is exempt under MCR 3.101(I)(6), the garnishee shall indicate on the disclosure the specific exemption. If the garnishee is indebted, but claims the withholding is exempt for some reason other than those set forth in MCR 3.101(I)(6), the garnishee shall indicate

on the disclosure the basis for its claim of exemption and cite the legal authority for the exemption.

(2) [Unchanged.]

(I) Withholding. This subrule applies only if garnishee is indebted to or obligated to make periodic payments to the defendant.

(1)-(5)[Unchanged.]

(6) A bank or other financial institution as garnishee shall not withhold exempt funds of the debtor from an account into which only exempt funds are directly deposited and where such funds are clearly identifiable upon deposit as exempt Social Security benefits, Supplemental Security Income benefits, Railroad Retirement benefits, Black Lung benefits, or Veterans Assistance benefits.

(J)-(T)[Unchanged.]

Staff Comment: The proposed amendments of MCR 3.101 would add language to protect exempt funds from garnishment and would require financial institutions to provide authority stating why certain funds are exempt.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by April 1, 2009, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2008-41. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 16, 2008

Corbin R. Davis
Clerk